[28.]

THE CASE OF THE CHARTER OF LONDON STATED.

SHEWING,

I. What a Corporation is.

II. Whether a Corporation may be Forfeited.

III. Whether the Mayor, Commonalty, and Citizens have done any Act in their Common Council, whereby to Forfeit their Corporation and Franchises.

LONDON,

Printed for *John Kidgell*, at the Golden Ball, near *Grays-Inn* Gate in *Holborn*. 1683.

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THE CASE OF THE CHARTER OF LONDON STATED, &c.

AN Information against the Mayor and Commonalty and Citizens of the City of London, for Usurping of divers Franchises and Liberties within the said City, and for assuming to themselves an unlawful Power to Levy several great Sums of Money, as well upon the said Citizens of London, as Strangers, and in particular, upon those which come to the Markets of the said City, by Colour of the Laws and Ordinances in their Common Council by them in Fact Ordained and Established, without any proper Right or Authority. And for that the said Mayor and Commonalty, and Citizens, in their said Common Council Assembled, did Vote and Ordain, that a certain Petition, under the Name of the Mayor, Aldermen, and Commons of the City of London, in their Common Council Assembled, should be exhibited to our Lord the King that now is, Maliciously, Seditiously, and to the intent that the same Petition might be Published and dispersed abroad amongst his now Majesties Faithful Subjects, to induce them into an Opinion that our said Lord the King that now is, by Prorogation of the Parliament had Obstructed the Publick Justice of the Kingdom, and to induce the same Subjects of our said Lord the King that now is to the Hatred of the Person of our said Lord the King and of his Government Established in this Kingdom, and to disturb the Peace and Tranquility of this Kingdom of England, they did then Ordain, that the same Petition, containing the said Scandalous and Seditious Matter, should be Imprinted;

and

and afterwards to the intent that the ſame might be Publiſhed and diſperſed amongſt the Subjects of our ſaid Lord the King that now is, to alienate and divert their Affections from our ſaid Lord the King, and from his Government, they Maliciouſly, and Advitedly, and Seditiouſly did Print, and cauſe to be Imprinted and Publiſhed, to the Contempt and Scandal of our ſaid Lord the King, and of his Government of this Kingdom of England, and to the raiſing and promoting of Sedition and Diſturbance of the Peace and Tranquility within this Kingdom of England, and to the pernicious Example of others his Majeſties Subjects.

In the Diſquiſition therefore of this Caſe,

WE ſhall Conſider, 1. What a Corporation is. 2. If a Corporation may be Forfeited. 3. If the Mayor and Commonalty and Citizens have done any Act in their Common Council whereby to Forfeit their Corporation and Franchiſes.

A Corporation is either Sole, as Biſhop, Parſon, 39 *H.* 6. 14. 7 *E.* 4. 12. or Aggregate, as Mayor and Commonalty.

A Corporation Aggregate is a Lawful Society of a certain Number of Men Conſtituted by the King, with divers Liberties and Priviledges, 11 *H.* 7. 27. *Fitz. grant* 30. *Summa Hoſtienſis. Fol.* 60.

All Corporations have their Origination and Eſſence from the King, otherwiſe it's an Illegal Society, contrary to the Laws and Statutes of the Kingdom. 9 *H.* 6. 16. *b. Lib.* 10. *Fol.* 26. 33. *Inſt. Part* 3. *Fol.* 202. *Lib.* 8. *Fol.* 125.

One Corporation cannot make another by Uſage or Preſcription, 49 *E.* 3. *Fol.* 3. 29. *Aſſ.* 8. *Book. Corporation, n.* 45.

Neither can the King give Licenſe to any one to make a Corporation, *Lib.* 10. *Fol.* 27. *b.* But one Corporation may be made out of another by the King, 9 *E.* 3. *Fol.* 18.

The King may, if he pleaſeth, make a limited Corporation, or a Corporation to a ſpecial purpoſe, as to take and not to give, or Conditional to pay Rents, *&c. P.* 11. *Jac. en le Exchen. St. Saviours* Caſe. 21 *E.* 4. 59. 2 *H.* 7. 13. *Dy. Fol.* 100. *a.* If the King grants *Hominibus De Dale* to be quit of Toll, they are a Corporation to that purpoſe, 21 *E.* 4. 55, 56.

The King grants *Civibus de Norwico quod non ponantur in Juratis*, &c. the grant is good, and makes them a Corporation, 21 *E.* 4. 55, 56. 2 *H.* 7. 13. 7 *H.* 4. 44.

When a Corporation is rightly Created, all Incidents are *tacite* annexed to it, *Lib.* 10. *Fol.* 30. *b. St. Saviours* Caſe.

If the King Creates a Corporation, and doth not give any expreſs Power in the Letters Patent to make Laws or Ordinances, yet this Power is incident to the Corporation, and is included in the very Act of Incorporating, as is alſo the Power to Sue, to Purchaſe, and the like; but theſe Laws ought always to be ſubject to the Laws of the Realm, as Subordinate to it, *Hob. Rep. Fol.* 285. Therefore every Law made by any Corporation, ought to be, 1. *Remedium Congruum*, a fit Remedy to redreſs the Miſchief. 2. *Bona fidei & rationi Conſonum*, Conſonant to Juſtice and right Reaſon. 3. *Pro Communi utilitate Civium & aliorum fidelium domini Regis*, for the Publick Profit of the Citizens and other the good Subjects of the King; and therefore Ordinances or Laws by them made *pro privato lucro*, and not *pro bono publico*, for private Advantage, and not for the publick Good, are void. *Lib.* 5. *M.* 32. & 33. *Edw. BR. Chamberline de Lond. Caſe. Hob. Rep. Fol.* 212. *P.* 14. *Jac. Rot.* 507. *Norris & Stamp.*

A Franchiſe or Liberty is a Royal Priviledge in the Hands of a Subject, of ſome Benefit, Power, or Freedom that Perſons or Places have above others, *Crompt. Juriſ. Fol.* 241.

Franchiſes are real or Perſonal.

Franchiſes

Franchiſes Real are Priviledges annexed and given by the King to ſome Place, as County Palatines, Corporations, *Lamb. Eren. lib.* 1. *c.* 9. *Plowd. Fol.* 123. *Crompt. Juriſ.* 137.

Franchiſes Perſonal, which are granted by the King to ſome Perſon or Perſons, as Exemption from Juries, from Toll, 21 *E.* 4. 55, 56.

All Franchiſes were Originally derived from the Crown, but now by continuance of Time are Claimed and had in ſome Caſes by Preſcription, *Inſt. Part* 1. *Fol.* 114. *Lib.* 9. *Fol.* 23. *Boulſt. Part* 1. *Fol.* 57. *Part* 2. *Fol.* 233. *Mores Rep. c.* 918.

If a Corporation Claims ſome Priviledges by Charter, and others by Preſcription, and ſo to conclude, *Et eo Warranto utitur*, it's good in Law, *Mores Rep.* 443.

Amongſt Franchiſes, ſome are more Royal, as the Franchiſes of Counties Palatines, *&c.* Others leſs Royal, as Markets, Fairs, *&c.* Of theſe, ſome lye in doing, as to make Juſtices of Peace, to Pardon Felonies, *&c.* Some lye in having, as the Goods of Felons, of Fugitives, Wayſes, Eſtrays, *Dy. Fol.* 44. *Plowd. Com. Fol.* 169. Others do lye in Diſcharge, as Exemption from Payment of Subſidies, *&c.*

Henry the Sixth, by his Letters Patent, 20 *H.* 6. Granted to *Corpus Chriſti* Colledge in *Oxon*, that they and their Succeſſors, and their Tenants ſhould be diſcharged of Payment of Toll for Pontage and Paſſage in every Place within *England*, and adjudged to be good, *Y.* 43. *Ch. B R.* Enter Wood & *Hawkſel Rolls Abr. Tit. Prerog. l.* 2. *Fol.* 198.

The Iſle of *Guernſey*, for Eight Years was diſcharged of all manner of Tolls, Exactions, and Cuſtoms, *Rot. Parl.* 14. *R.* 2. *n.* 30.

Tenants in Ancient Demeſnes are free and quit of all Tolls in Fairs and Markets for all things concerning Husbandry and Suſtenance, *Inſt. Part* 4. *Fol.* 269. 21 *E.* 459.

Some Franchiſes may be Forfeited, 1. By a Non-Uſer. Some, 2. By a Refuſer. And others, 3. By an Abuſer, or Miſ-uſer.

1. By Non-Uſer, as thoſe Franchiſes which are *pro bono publico*; and therefore if one hath a Leet to keep, and never keep it, or a Clerk of a Market, who never attends his Office; theſe by Non-uſer are Forfeited.

The Non-uſer of a Fair or Market is no cauſe of Forfeiture, 2 *H.* 7. *Fol.* 11. But the Non-purſuit or Arreſting of Felons by him that hath the Franchiſe, it may cauſe a Forfeiture, 3 *E.* 1. *c.* 9. 39 *H.* 6. 33, 34.

2. Refuſer: The Abbot of *Crowland* had a Gaol, wherein divers Men were Impriſoned, and becauſe he refuſed to deliver them, but detained ſome of them who were Acquitted of Felony, after their Fees paid, the King ſeized the Gaol for ever, 20 *E.* 4. 6.

The King granted to the Abbot of *St. Albans* to have a Gaol-delivery, and divers Perſons were Committed to the Gaol for Felony, and becauſe the Abbot would not be at Coſt to make Deliverance, he detained them in Priſon long time without making Lawful Deliverance, the Abbot had for that cauſe Forfeited his Franchiſe, and that the ſame might be ſeized into the Kings Hands, 8 *H.* 4. 18. 20 *E.* 4. 6. *Brook Tit. Forfeiture. Inſt. Part.* 2. *Fol.* 43.

3. Abuſer, or Miſ-uſer. If a Corporation hath Franchiſes, and Abuſe or Miſ-uſe them, they may be Forfeited, *Inſt. Part* 1. *Fol.* 183. The ſame Law, if they take for Murage more than they ought to take by their Grant, *Weſt.* 1. *c.* 31.

The Duke of *Norfolk* had the Office of Mariſchal of the Kings Bench; he made a Deputy, who permitted the Priſoners to eſcape, adjudged that it was a Forfeiture of the Office: But if the Duke had made a Grant for Life to *J. S.* and he had permitted the Priſoners to eſcape, this had been no Forfeiture but for the Life of *J. S.* For in the Caſe of the Deputy the Duke did remain Mariſchal, and ſo *Reſpondeat Superior*; but in the other Caſe *J. S.* was Mariſchal for his Life, and ſo ſhall Forfeit only his own Intereſt, 39 *H.* 6. 33, 34.

Where an Office is granted to a Man, and he miſ-uſe or do not his Office, this is a cauſe of Forfeiture of it, *Ibid.*

When the Lord of a Franchiſe refuſe to do a thing according to the Grant of the Franchiſe, or doth a thing againſt his Franchiſe, or miſ-uſe his Franchiſe by himſelf or Deputy, or non-uſe his Franchiſe, in all theſe Caſes the Franchiſe ſhall be ſeized:

For when the King grants a Franchiſe, there is a Condition in Law, that he ſhould do Right to all Parties concerned, if not, the Franchiſe ſhall be ſeized, 20 E. 4. *Fol.* 5, 6.

When one Franchiſe is incident to another of Common Right, then the Forfeiture of the one is the Forfeiture of the other, as the Abuſer of the Court of Pye Powders may cauſe the Forfeiture of the Fair.

When the Franchiſes are one of them Subordinate to another; but otherwiſe when they are Abſolute, or by ſeveral Titles or Patents, *H.* 17. *Jac.* B R.

If one hath a Fair or Market for one day, and he keep it another day; as when a Grant or Preſcription be for Wednesday, and he keep it on Thurſday, it's a cauſe of Forfeiture. So when a Fair or Market is Granted to one for one day in the Week, and he keep it two days, but in the laſt Caſe, the Forfeiture ſhall be only of that he hath Uſurped, *Co. Lib.* 9. *Fol.* 36, 37. *Aſſ.* 34. *Old n. b. Fol.* 157.

If a Man keeps a Fair or Market two days, and being Queſtioned by the King for it, and claims both days by the Kings Grant, and it's afterwards found that he hath Right but to one day by Preſcription, and to another by Patent, and the firſt is found againſt him, this will be no Forfeiture of the laſt, *Lib.* 9. *Fol.* 50.

In ſome Caſes for the Abuſer of a Franchiſe one ſhall be Fined only, and not Forfeit his Franchiſe. So for the Uſurping of a Franchiſe, where none is, or of more than is due; but to take leſs than is due, is no cauſe of Forfeiture, *Broke Tit. Forfeiture*, n. 37.

H. 3. The Arch-Biſhop of *Dublin* was Fined Three Hundred Marks, for that he did diſ-foreſt a Foreſt of the Church, 2 *H.* 4. 3. *Lib.* 11. *Lyfords Caſe.*

By an Ancient Record, in the Time of *William* the Conquerour, it doth appear, that the end of Erecting of Corporations, and making and eſtabliſhing of Cities and Towns Corporate, was, 1. *Ad Conſuetudines Regni & jus commune & dignitates Coronæ Conſervand.* for the conſervation of the Dignities and Preheminencies of the Crown, and the Laws of the Land. 2. *Ad tuitionem gentium & Populorum Regni*, for Defence of the Kings Subjects, and for keeping the Kings Peace in time of ſudden Uproars. 3. *Ad defenſionem Regni*, for Defence of the Realm againſt outward and inward Hoſtility.

If a Corporation may be Forfeited.

A Corporation may be Forfeited: Corporations are called Liberties, Franchiſes, as it doth appear by the Writ of *Non omittas propter aliquam libertatem, Regiſt.* 82. *f. n. b.* 74. *a.* and by that Name have been ouſted. By the Surrender of all Franchiſes and Liberties a Corporation is gone, *Cokes Entries, Fol.* 527. *Palm. Rep. Fol.* 493.

Cives London *petunt quod Rex vetit ius concedere preſtinum ſtatum ſcilicet Majororem & antiquas libertates, Rex non habet inde Conſilium quia ſunt in bono ſtatu ut ſibi videtur, & hac vice ſtatum non mutabit. Inter les Petitions de Parliament* 18 E. 3. 1.

The Citizens of *London* Petition the King that he would be pleaſed to grant to them their former ſtate, that is to ſay, their Mayor and Ancient Liberties: The King gave them this Anſwer, That he was not Adviſed to it, becauſe they were in a good ſtate and condition, as it ſeemed to him, *at prò hac vice*, he would not alter or change.

The City of *Norwich* and the Liberties thereof ſeized into the Kings Hands for Burning of the Cathedral Church there, but afterwards upon their Petition, and Paying a great Fine, their Liberties were reſtored to them, 13 E. 1. *Rot. Fin. m.* 10.

Quia Homines de Southampton *verberaverunt & vulneraverunt uſque ad mortem* Gilb. Canon, *qui exequabatur præceptum Regis in dicta villa, pro tranſgreſſione villæ Capta fuit villa iſta in manum Regis & finem fecerunt, & firmam ſuam exaltaverunt ad* 20 *l. per Annum.* Rolls Abridgm. Part 2. Tit. Prerog. Fol. 204.

Becauſe the Men of *Southampton* did beat and Wound even to Death, *Gilb. Canon*, who did Execute the Mandate of the King in that Town; for the Offence and Tranſgreſſion of the ſaid Town, the ſaid Town was ſeized into the Kings Hands, and they paid a Fine, and their Fee-Farm Rent was advanced to 20 *l. per Annum.*

Mandatum

Mandatum eſt Guilielmo de Haverhall, *Theſaurario Regis quod Civitas* London *Capiatur in manum Regis, eo quod Cives ejuſdem Civitatis non tenuerunt Hutesium & clamorem Secundum Legem & conſuetudinem Regni, Teſte Rege apud* Wondeſtock *22 die* Auguſti. Rot. Claus 30. H. 3. m. 5. Inſt. Part 3. Fol. 118.

William de Haverhall, Treaſurer of the King, is Commanded that the City of *London* be ſeized into the Kings Hands, for that the Citizens of the ſaid City did not make Hue and Cry according to the Law and Cuſtom of the Kingdom.

29 E. 3. the Liberties of the City of *Oxford* ſeized for a Riot, and part of them granted to the Univerſity, which they do enjoy to this day. *Rot. Clauſ. 29 E. 3. m. 9.* And in the 32 *H.* 3. the Liberties of the City of *Oxford* were ſeized into the Kings Hands, 32 *H.* 3. *m.* 18.

The Liberties of the Mayor, Bayliffs, and Commonalty of *Cambridge* were ſeized into the Kings Hands, for that in the late Tumults and Uproars there, they and other miſ-doers did break up the Treaſury of the Univerſity of *Cambridge*, and thereout take and burned ſundry the Charters, *&c.* of the ſaid Univerſity; and for that they compelled the Chancellor and Scholars of the ſaid Univerſity, under their Common Seal, to releaſe to the ſaid Mayor and Burgeſſes all manner of Liberties, and alſo all Actions Real and Perſonal, and further to be bound to them in great Sums of money. And the King did grant unto the Chancellor and Scholars aforeſaid within the ſaid Town of *Cambridge* and Suburbs of the ſame, divers of the ſaid Liberties; that is to ſay, the Aſſize, Conuſance, and Correction of Bread, all Weights, Meaſures, Regrators, and Fore-ſtallers, with the Fines and Amercements of the ſame, *Rot. Parl.* 8 *R.* 2. *n.* 11. *Inſt. Part* 4. *Fol.* 228.

31 *E.* 1. The Liberties of the City of *Wincheſter* were ſeized, and after upon their Petition and a Fine paid they were reſtored, 31 *E.* 1. *Rot.*

T. C. Jac. Rot. 3. The Liberties of *Newmarket* in *York-ſhire* ſeized, and part of them never re-granted.

9 *E.* 1. The Liberties of the Corporation of *Sandwich* ſeized, and Judgment *quod amittant libertates.*

Vide m. 18. *E.* 3. *Rot.* 62. *B R. en. Talley Office.*

Vide Rot. Clauſ. 15 *E.* 2. *m.* 2. *Pat. Rot.* 20 *E.* 2. *m.* 5. *Clauſ. Rot.* 16 *R.* 2. *m.* 30. *Cl. Rot.* 22 *H.* 6. *m.* 21. *m.* 16. *Carol.* 1. where the Liberties of divers Towns were ſeized. Judgment given that the Liberties of the Town of *Barkenſtead* in *Hartford-ſhire* ſhould be ſeized.

The Liberties of *London* ſeized for giving of falſe Judgment in the *Huſtings*, 28 *E.* 3. *c.* 20. Puniſhments of the defaults of the City of *London*, and their Franchiſes to be Forfeited upon their default.

Rex amovit cuſtodem Hoſpitalis de ſuo Patronatu quia male diſpendit proficua domus, 9 E. 3. Lib. 11. Magdalen Colledge Caſe.

If a Biſhop cut down all the Timber and Trees of his Biſhoprick, he is to be Depoſed as a Delapedator, 2 *H.* 4. *Fol.* 3. *Lib.* 11. *Liffords Caſe.*

The Colledges of the Templars, in the Reign of *Philip the Fair* of *France*, for their Inſolency, Oppreſſion, and Miſdemeanors were all Forfeited and ſeized into the Kings Hands; the like was uſed againſt the Corporations and Societies of the Jews, as well in *France* under *Dagobert*, *Philip Auguſtus*, and *Philip the Long*, as afterwards in *Spain* under *Fertlinando* King of *Aragon* and *Caſtile*, *Bodin. Repub. Lib.* 3. *Fol.* 383. *Kelway.* 6 *H.* 8. *Fol.* 169, 170. *Regiſt.* 20. *Inſt. Part* 2. *Fol.* 432.

The Corporation or Community of the City of *Corbeil* in *France* was Forfeited and ſeized into the Kings Hands. *Bodin. Repub. Lib.* 3. *Fol.* 373.

And therefore Offences done by a Corporation Collegiately Aſſembled, the whole Corporation is Puniſhed by loſs of their Priviledges, or of the Right of their Community. *Bodid. Lib.* 3. *Fol.* 373.

A Prohibition went to the Biſhop of *Norwich*, and he Excommunicated the Party that brought this Writ, thereupon an Action of the Caſe was brought againſt the Biſhop, and ſo ſet forth the whole Matter, and it being found againſt the Biſhop, it was adjudged that his Temporalities ſhould be ſeized untill he Abſolved the Party, and ſatisfied the King for the Contempt, 21 *E.* 3. *Rot.* 46.

The

The Bishop of *Durefm* pretending that he had a Priviledge that the Kings Writ was not to come there, and because one brought it thither, he Imprisoned him, and this being Proved by Information against him, it was adjudged that the Bishop should pay a Fine to the King, and lose his Liberties. 31 E. 1. *Rot.* 18. *Crok. P.* 8. *Car. Fol.* 253.

By the Stat. 13 *Eliz. c.* 12. Subscription is required of the Clergy, if they refuse to Subscribe, the Parties are disabled, and *ipso facto* deprived, *Inst. Part* 4. *Fol.* 324.

Dilapidations is a fault for which the Incumbent may be deprived, 29 E. 3. 16. 20 H. 6. 40. 9 E. 4. 34.

By the same Reason, if a Corporation doth Abuse or Mis-use their Franchises, they do lose them, for there is a Condition in Law annexed to them, that they shall rightly use them, otherwise they shall be Forfeited.

If a Corporation may be Dissolved, then it may be Forfeited; but a Corporation may be Dissolved, *ergo*, Forfeited; for the Liberties being seized into the Kings Hands, they are Extinct.

Anno 34 H. 8. the Hospital of St. *John* of *Jerusalem*, and divers Monasteries were Suppressed and Dissolved, and their Possessions vested in the Real and Actual Possession of the King. When the Religious Persons of Abbies or Monasteries are deceased, and they have lost their Habit, Rule, and Order, then the Corporation is absolutely dissolved. *Davyes Rep.* 11. *Case de Broxies. Fol.* 1. *b.*

If Lands be given to a Dean and Chapter, or to a Mayor and Commonalty, and to their Successors, and after such Body Politique or Incorporate is Dissolved, the Donor and his Heirs shall have again the Land, and shall not Escheat; and the Reason is, because the Fee is vested in their Politique Capacity; and therefore the Law doth annex a Condition to every such Gift and Grant, that if such Body Politique be Dissolved, the Donor shall re-enter, for that the cause of the Gift faileth, *Inst. Part* 1. *Fol.* 13. *b. Brok. Corp. n.* 78.

Object. But it may be Objected, that a Corporation aggregate is immortal, invisible, and never dyes, 39 H. 6. 14. *a.* 21 E. 4. 27.

Answ. It's Answered, that a Corporation is Immortal not in *Thesi*, for we see they have their *ortus* and *occasus*, but in *Hypothesi*, in respect of their perpetual Succession, and because its presumed they will do no Act to Dissolve them, or commit any Offence by which they may Forfeit their Right of Community.

If a Corporation consists of Brothers and Sisters, and afterwards all the Sisters are dead, all the Grants and Acts made by the Brothers are void, for when the Holy Sisters are dead, it's no perfect Corporation, *m.* 37 *Eliz. B R. the Case inter Serjeant Lovelace and Manwood, Rolls Abridg. Fol.* 514. But suppose all the Brothers should likewise dye, where is the Immortality of the Corporation?

Though a Corporation cannot be granted over or assigned to any Person or Persons, yet it may be surrendred to the King; for a Corporation hath its Origination and Essence by the Charter of the King, by the surrender of their Charter the Corporation is gone: For after surrender of their Charter, if they use their Franchises, they are Usurpers upon the King; and if a *Quo Warranto* be brought against them, what can they Plead, their Charter being surrendred? Must they not submit to such a Fine as shall be imposed upon them?

If a Corporation may surrender its Charter, it may by mis-user or abuser Forfeit its Charter; and if the Charter by which they are Incorporated be Forfeited, where is the Corporation? Is it not translated into *Aristophanes* City in the Clouds, for now it is Invisible?

Object. But it may be Objected, that if a Corporation doth surrender all its Lands and Franchises unto the King, yet the Corporation doth remain; for the Dean and Chapter of *Norwich*, 2 E. 6. did surrender to the King their Church and Possessions, and he Incorporated them by the Name of Dean and Chapter, &c. *Sanctæ & individuæ Trinitatis Norw. ex fundatione*, E. 6. and re-granted to them their Church and Possessions, by the Name of Dean, &c. omitting *ex fundatione Regis*, E. 6. And it was adjudged the Ancient Corporation remained.

Answ. It's

Anſw. It's Anſwered, That by their Incorporation of *Henry* the Eight, they were to be Dean and Chapter of the Biſhop of *Norwich*, and therefore to be of his Council, to Adviſe with them about the determination of difficult Points and Controverſies of Religion; and alſo to give their conſent to every Grant which the Biſhop ſhould make to bind his Succeſſor: For it was thought by *Henry* the Eight not to be Reaſonable to impoſe ſo great Confidence in any ſole Perſon, as to give him Power to bind his Succeſſor, and therefore without the conſent of the Biſhop, he having an Intereſt in them as a Corporation, to be his Counſel, the Dean and Chapter, without the conſent of the Biſhop, could not ſurrender their Corporation, but ſhall remain as long as the Biſhoprick continue, *Lib. 5. n.* 40, 41. *Eliz. Dean & Chapter de Norw. Caſe.*

Object. Civitas London *habeat omnes libertates ſuas antiquas & conſuetudines*, Mag. Ch. c. 9.

The Liberties of the City of *London* for any Cauſe ſhall not be taken into the Kings Hands, *Rot. Parl.* 1 *E.* 3. *Authoritate Parliamenti*, *Inſt. Part* 4. *Fol.* 253.

Anſw. That the City of *London* ſhall have its Ancient Franchiſes and Frank Cuſtoms, it's Excellently Interpreted by our Ancient Authors, that the Citizens of *London* ſhall have their Franchiſes of which they are ſeized by a Righteful and Loyal Title of the Gifts, Grants, and Confirmations of the Kings, and which they have not Forfeited by their Abuſer or Miſ-uſer, and that they have thoſe Franchiſes and Cuſtoms which are ſufferable by Right, and not Repugnant to Law, *Inſt. Part* 2. *Fol.* 20. *Mirror*, *Ch.* 5. §. 2. *Fleta Lib.* 2. *c.* 48. *Plowd. Com. Fol.* 40. And it doth appear by the Authorities aboveſaid, that for Abuſion the Franchiſes of the City of *London* may be ſeized: And whereas the Act 1 *E.* 3. ſaith, that the Liberties ſhall not for any cauſe be ſeized, *&c.* it muſt be underſtood, that for any cauſe that is not reaſonable, or at the Kings Pleaſure, they ſhall not be ſeized.

The Citizens of *London* were before and after the Conqueſt Governed by Portgraves or Portgreeves until the Reign of King *Richard* the Firſt, by whoſe Charter they were Governed by two Bayliffs: But King *Richard*, the firſt Year of his Reign, appointed them a Mayor, who continued therein until the Eight Year of King *John*, and then King *John* appointed a Mayor, and becauſe ſometime the Mayor appointed by the King was no Citizen of *London*, King *John*, the Tenth Year of his Reign, Granted to the Citizens Liberty and Authority to chooſe a Mayor *De ſeipſis*, *Inſt. Part* 4. *Fol.* 255.

7 *R.* 2. it was Enacted that the Aldermen of *London* ſhall not from henceforth be Yearly choſen, but ſhall remain till they be put out for Reaſonable cauſe, notwithſtanding the Ordinance of *Edward* the Second and *Edward* the Third. So that by this Act it doth appear, that for Reaſonable cauſe an Alderman might be put out, *Rot. Parl.* 7 *R.* 2. *n.* 25.

So that by the Authorities above-ſaid it doth appear, that a Corporation is a Franchiſe, and that a Franchiſe may be Forfeited, and by conſequence a Corporation.

3. *If the Mayor and Commonalty, and Citizens have done any Act in their Common Council, whereby to Forfeit their Corporation and Franchiſes.*

wherein we ſhall Enquire, 1. Whether the *Quo Warranto* be well brought againſt the Mayor and Commonalty and Citizens, *&c.* or ought not the ſame to have been againſt particular Perſons. 2. How far the Acts of the Common Council ſhall bind the Corporation. 3. What thoſe Acts were. 4. If they amount unto a Forfeiture of the Franchiſes and Liberties.

1. It's conceived that the *Quo Warranto* is well brought againſt the Mayor and Commonalty and Citizens of the City of *London*, without naming any Perſons in particular, for by that Name they ought to Plead and be Impleaded, *&c.*

An Action was brought againſt the Maſters and Scholars of *New College* in *C.* and well brought, 15 *E.* 4. *Fol.* 33. *a.*

Quo Warranto verſus le Corporation de Maydenhead *in* Barkſhire, *quod Gardiani, Pontenarii Burgenſes & Communitas de villa de* Maydenhead, for three Years have uſed a

Market with divers Liberties. *H.* 17. *Jac. B R. Rot.* 106. *in Coron. Office. Palmer's Rep. Fol.* 80.

An Action upon the Stat. of *Winchester* was brought againſt the Men Inhabitant *in Hundredo de Elthorn* and *Spelthorn*, without naming any particular, and well brought. *T.* 12. *Jac. Foſters Caſe. Huttons Rep. Croke Part* 2. 187. *Noys Rep. Fol.* 21.

An Action *verſus Inhabitantes in domidio Hundredi d' Waltham*, and adjudged good, *T.* 15. *Jac. Rot.* 2244. *Conſtables Caſe. Brownl. Part* 1. *Fol.* 156.

An Action was brought againſt Dean and Chapter, without Naming them by their Names of Baptiſm; ſo if Dean and Chapter bring an Action, 21 *E.* 4. 15.

An Action upon the Stat. of *Winchester*, and 27 *Eliz. Verſus homines Inhabitantes de D. Raſal. Entries, Fol.* 406.

If the King grants Land in Fee *Probu hominibus villæ d' D.* it's a good Corporation; and ſo, if he grants Lands *Burgenſibus Civibus & Communitati*, to the Burgeſſes, Citizens, and Commonalty, they may ſue and be ſued by thoſe Names, and they may have an Action *ad reſpondendum Probu hominibus, Burgenſibus Civibus*, &c. 7 *E.* 4. 14.

Where Mayor and Commonalty is ſued, and all the Commoners appear in their proper Perſons, it's not good, for this is another Body; therefore the Corporation ought to appear by Attorney by the Name of the Corporation, and not in their proper Perſons, 19 *H.* 6. 8. *Brok. Tit. Corporation, n.* 28.

A *Quo Warranto* was brought againſt the Mayor and Bayliffs of *Maydſtone*, *T.* 2. *Car. in B R.* The Mayor and Bayliffs of *Maydſtone's* Caſe. *Poph. Rep. Fol.* 180.

An Information againſt the Inhabitants of the Town and Burrough of *Denbigh* in the County of *Denbigh*, for Uſurping divers Franchiſes, &c. *Cokes Entries, Tit. Quo Warranto. Fol.* 537. *b.*

2. So that if a *Quo Warranto* is well brought againſt *Burgenſes, Cives, Inhabitantes & Communitatem de villa*, &c. be good *a fortiori*, this *Quo Warranto* being brought againſt the Mayor and Commonalty, and Citizens of *London*.

2. The Burgeſſes of the Town of *Tewksbury* in the County of *Glouceſter*, brought an Action of Debt upon the Statute of 8 *H.* 6. *c.* 27. which hath reference to the Statute of *Winchester*, if Satisfaction be not made for the Robbery therein mentioned, within fifteen days after Proclamation: The Action was given againſt the Commonalties of the Foreſt of *Dean*, which are adjacent to the River of *Severn*, and of the Hundreds of *Bledſtow* and *Weſtbury*, and the Writ was, *Præcipe Communitati Foreſtæ de* Deane *& Hundredis de* B. *&* W. Exception was taken to the Writ, for the Writ ought to have been *Præcipe Communitati Foreſtæ d'* Deane *& Hundredorum de* B. W. according to the words of the Statute of 8 *H.* 6. as one entire Commonalty, and yet the Writ was adjudged good, for that it was to the ſame effect, 8 *H.* 6. *c.* 27. 11 *H.* 6. *Fol.* 47. *a. Inſt. Part* 2. *Fol.* 570.

The next thing which falls into Conſideration, is, How far the Acts of the Common Council ſhall bind the Corporation.

1. The Acts of the Common Council ſhall bind the Corporation, for that Court hath ſome Reſemblance of the High Court of Parliament, for it conſiſteth of two Houſes, the one of the Mayor and Aldermen, the other of ſuch as be of the Commons Aſſembly, Repreſenting the Commonalty of *London*. In this Court they may make Conſtitutions and Laws for Government of Trade and Traffick, for the better Execution of the Laws and Statutes of the Nation, or *pro bono Publico*, and for the good Government of the City, ſo thoſe Conſtitutions and Laws be not contrary to the Laws and Statutes of the Nation: And being made by the Mayor, Aldermen, and Commonalty, do bind within the City of *London* and the Liberties thereof. *Inſt. Part* 4. *Fol.* 249. *Lib.* 5. 62, 63. *the Chamberlain's Caſe. Lib.* 8. 173. *the Caſe of the City of* London.

14 *H.* 8. It's ſaid, that the Dean and major part of the Chapter make the Corporation, and their Act is the Act of the Corporation, although the others do not agree to it, 14 *H.* 8. *Fol.* 9. So in the 21 *E.* 4. 27, 70. *b.* it's ſaid, *ubi major pars ibi tota*, 9 *H.* 6. 32.

If

If the Major part of the Corporation doth Impriſon the Minor part until they conſent to do an Act, although they do not conſent, yet the Act done by the Major part ſhall bind all, and its the Act of the Corporation, 15 *E.* 4. *Fol.* 2. And with this agrees *Panormitan C. cum in cunctis*; where it's ſaid, *Quod authoritas & protectas Capituli conſiſtit in majori parte ejus, & ſic totum Capitulum facere dicitur quod major pars facit*, Davyes Rep. *Fol.* 48.

Therefore I agree, that if the Minor part of a Corporation accept of a New Charter, it ſhall not bind the Corporation, *T.* 13. *Jac. Baggs Caſe Rolls, Rep. Part* 1. *Fol.* 224.

Yet in ſome Caſes the Act of one, or of ſome few of the Corporation will bind the reſt: Did not the Corporation of *Sandwich*, for the Miſdemeanour of *John Dennis*, the then Mayor thereof, in a high Meaſure ſuffer, and being thereof Convicted, was not the Judgment thereupon *Quod Communitas amittat libertatem?*

The Command of the Mayor only, to the Bayliff of the Corporation, to enter into certain Lands for the Corporation, though it be without Deed, ſhall be good, and bind the Corporation, 16 *H.* 7. 2.

A Sum of 100*l. per Annum* was due to the Mayor and Commonalty of *Southampton* out of the Cuſtoms of the King, an Acquittance by the Mayor alone, becauſe he was the Head of the Corporation, was allowed by the Juſtices, and for that there were ſhewn many Priſidents of Acquittances by the Mayor made in times paſt, 2 *R.* 3. *Fol.* 7.

An Action of Debt was brought againſt the Provoſt and Scholars of a Colledge in *C.* for that *T. M.* their late Provoſt and Predeceſſor of the Def. and the Scholars by *F.* their Servant bought certain Goods to the value of 10*l.* which came to the uſe of the Colledge: By the Juſtices it was agreed, that the Contract was good, and ſhall be intended the Contract of the Provoſt only, and the Name of Scholars is but ſurpluſage, for the Contract of the Provoſt, and for that it came to the Uſe of the Colledge is ſufficient, 5 *E.* 4. 7. *Brok. Corporation, n.* 53.

A Writ of Covenant was brought by the Mayor and Commonalty *d' H.* againſt the Mayor and Commonalty of *D.* and declared that the Defendants by their Deed Covenanted that the Plantiſes ſhould be Free of Murage, Pontage, Cuſtoms, and Toll in *D.* of all thoſe of *H.* and that they have unjuſtly taken Toll by certain of their Burgeſſes of certain of the Burgeſſes of *H. &c.* adjudged that the Priſal and taking by their common Miniſter, is a taking of the whole Corporation, for it cannot reaſonably be intended that the whole Community could meet together to take Toll, and therefore it was adjudged a breach of the Covenant; there is no mention made that he was their Miniſter by Specialty, *Sub communi ſigillo Corporationis.* 48 *E.* 3. *Fol.* 17.

I do agree, that where there are Garden and Chaplin, Mayor and Commonalty, Dean and Chapter, or the like, the Garden, Mayor, or Dean, ſolely cannot make a Leaſe, nor diſcontinue, for it ought to be by the whole Corporation, and by Deed, 21 *E.* 4. 70. But if the King makes a Corporation conſiſting of Twelve Men, to continue for ever in Succeſſion, when any of them dye, that the reſt may choſe others in their place, if three or four of them dye, yet all Acts done by them ſhall be valid in Law, *Rolls Abridgment Part* 2. *Fol.* 514.

By which it doth appear by what Acts a Corporation is bound, but when thoſe things are acted and done in the Common Council of the ſaid City, being a Court of Record, and which is Repreſentative of all the Free Men and Citizens of the City of *London*, they muſt in a more eminent degree bind the Corporation. We ſhall Obſerve,

4. What thoſe Acts were.

1. The ſaid Mayor and Commonalty and Citizens of the ſaid City of *London* have aſſumed an unlawful and unjuſt Power and Authority to Levy Money of the Subjects of our Lord the King, to the proper Uſe of the ſaid Mayor and Commonalty and Citizens aſſumed by colour of the Laws or Ordinances by them in Fact Ordained without any other Right, Title, or Authority; and in particular in their Common Council Aſſembled, they did make and publiſh a certain Law by them in Fact Enacted, for Levying ſeveral Sums of Money of all His Majeſties Subjects and

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Liege People, as well Free as not Free men of the ſaid City, and of other Foreigners, at the Publick Markets held within the City aforeſaid, coming thither to Sell their Victuals and Proviſions.

2. That the ſaid Mayor and Commonalty, and Citizens of the ſaid City, in their Common Council Aſſembled, without any Legal Authority, did aſſume upon themſelves to Cenſure and Judge our ſaid Lord the King and the Prorogation of the Parliament, and then and there being ſo Aſſembled in their Common Council, did Vote and Ordain, that a certain Petition, under the Name of the Mayor, Aldermen, and Commons of the City of *London* in the Common Council Aſſembled, ſhould be exhibited to our ſaid Lord the King, in which Petition there was contained, that by the ſaid Prorogation of the Parliament, the Proſecution of the Publick Juſtice of this Kingdom, and the making neceſſary Proviſion for His Majeſties Proteſtant Subjects was obſtructed: And they did Order the Imprinting of the ſame, and cauſed the ſame to be Publiſhed and diſperſed.

We ſhall enquire whether theſe Laws and Ordinances made by the Mayor and Commonalty and Citizens of *London* be Warrantable by Law or not.

I do agree that they have Power to make Laws and Conſtitutions for the well Government of the City, 22 *Aſſ. Part* 34.

But Ordinances which are contrary to the Publick Good, which is the ſcope and great End of all Laws (for *Salus Populi eſt Suprema Lex*) are injurious or prejudicial to a multitude, and beneficial only to ſome particular Perſons, ſuch Ordinances are repugnant to the Law of Reaſon (to which they ought to be ſubordinate) and by conſequence void: And moſt of the Ordinances and Conſtitutions which by the Common Law have been adjudged void, as being unreaſonable, againſt common Right, or purely againſt Law, if their Nature and Quality be conſidered, they have been found injurious to a multitude, and prejudicial to the Commonwealth, and to have had their commencement and continuance by Oppreſſion and Extortion.

1. They have made a Conſtitution and Ordinance to Levy ſeveral great Sums of Money, as well upon the ſaid Citizens of *London* as Strangers which come to the Markets of the ſaid City with Victuals, *&c.*

Theſe Sums of Money Levyed by them could not be Levyed for Toll, Pickage, or Stallage, incident to their Markets, or due by Preſcription (they do not pretend it to be) but by an Arbitrary Power, without any Right and againſt Law they have Levyed the ſaid Sums: Every Oppreſſion againſt Law by colour of any Uſurped Authority is a deſtruction within *Magna Chart. c.* 29. and it's the worſt of Oppreſſions that is done by colour of Juſtice: If the King *de novo* doth grant a Fair or Market, Toll doth not paſs as incident to it without ſpecial words. *Kelloway, Fol.* 138. 145. 11 *H.* 6. 19. 9 *H.* 6. 45. *T.* 38. *Eliz. Rot.* 936. *Heedy* & *Weldhouſe*. And the Reaſon is, becauſe it's but a private Profit againſt common Right.

They

If the King doth grant a Market with Toll, if he doth not appoint how much shall be taken for Toll, the Grant is void: For when the King doth create a Market, and grant such things which may be chargeable to the Subject, the Law presumes that the King granted it *Pro bono publico*, and the Subject had *Quid pro Quo*, and greater benefit by it; But it's against all reason to give power to any Subject to impose so much as he pleases upon another by Toll or other Duty; and the rule is given, Lib. 11. f. 8. in the Case *de Monopolies*, that every Grant and Grievance to the prejudice of the Subject is void, 13 *H.* 4. 14, 15. *Kelloway temps*, *E.* 3. 134. 30 *E.* 3. 15. 1. and expresly 9 *H.* 6. 45. it is, That in a Prescription for Toll, it ought to be set out how much had been used to be taken for Toll, 11 *H.* 6. 19. *Book tit. Patent* 11. 12. When the King erects a Court, he ought to appoint Officers, and not the Patentee; so that there be no oppression or extortion, 14 *E.* 3. 13, 14. In the 13 *H.* 4. the Commons complained in Parliament, that an Office was erected for Measurage of Clothes and Canvas, with a new Fee for the same by colour of the Kings Letters Patents; and prayed, that the said Letters-Patents might be revoked: For the King could erect no Office with new Fees to be taken of the people, who may not be so charged but by Parliament. The Royal Answer of the King in Parliament was, That the Statutes therefore provided should be observed: *Rot. Parl.* 13 *H.* 4. *n.* 43. 13 *H.* 4. *fol.* 16, 17. King *Edward* the Third had granted to *Robert Polcy* a new Office of Measuring Worsteads, with a new Fee: at the petition of the Commons it was resolved in Parliament to be void, and afterwards revoked as void by Authority of Parliament: *Rot. Parl.* 22. *E.* 3. *n.* 31. *Rot. Parl.* 25. *E.* 3.

And by the Stat. 34 *E.* 1. all Burthens or Charges put upon the Subject by the King, either to or for the King, or to or for any Subject, by the Kings Letters-Patents, or other Commandment or Order, is prohibited, unless it be by common consent in Parliament: 1 *Inst. Part* 2. *fol.* 534.

If the King cannot put or impose any Burthen or Charge upon the Subject but by their assent in Parliament; From whence do the Mayor and Commonalty and Citizens of *London* derive their Power and Authority to set and impose such Sums of Money? If from the King, that Power and Authority is against the 29 *ch.* of *Mag.* and the Statute of 34 *E.* 1. If by Prescription, that Prescription is against the said Statutes, and so void in Law: therefore it's an usurpation of an unlimited Power, and contrary to Law and Justice, and a just cause of forfeiture of their Corporation. And that which adds to the Superinjustice of their actings, as they have imposed these sums of Money upon the Kings Subjects, so they may at their wills and pleasure impose what greater sums of Money they shall think fit.

Richard D'Wakyes did distrain *William de Hay*, for that he did hold of him certain Lands *apud Lin de faud* by the service of 10 *s.* *Et per tallagium ei faciendum ad voluntatem ipsius* Richardi, *& quia ipsum* Willielmum *talliavit*, *Anno Regis* 9. *una f. vice ad* 2 *s.* *& atia vice Anno* 10 *&* 18 d. *quod tallagium ei à retro fuit pro prædictis* 2 *s.* *per Annum ipsum* Willielmum *distrinxit super feodem suum pro prædictis arreragiis*; Adjudged that the Tallage of 2 *s.* and 18 *d.* or any other sum uncertain: And because it was to be at the will and pleasure of the said *Richard D'Wakyes*, 'twas against the Statute of 34 *E.* 1. and so void: *M.* 11. *E.* 1. in *Banco. Rot.* 49. *Sussex.*

A Cuſtom that the Lord of a Mannor ſhall detain the Diſtreſs taken upon his Demeſnes until a Fine be paid unto him for the damage, at his will, is void. *Davys Rep. fo.* 33. *a.* 2 *H.* 4. 24. and becauſe he is Judge in his own caſe, 5 *H.* 7. *fo.* 9. 44 *E.* 3. *fo.* 19.

An Action of Treſpaſs was brought for carrying away of certain Trees. The Def. pleaded a Cuſtom; that he, of the Tenants of the Mannor, which firſt came to the place when, *&c.* ſhould have all the Windfalls there: Adjudged that this Cuſtom was void for the incertainty; and the reaſon given was, that that lieth not in Preſcription, which lyeth in the will and pleaſure of man; for the will of man is uncertain: 14 *E.* 3. *Fitz. Batt.* 277.

And this Ordinance of the Mayor and Commonalty and Citizens doth not onely extend to his Majeſties Subjects within the City of *London*, but unto Forainers and Strangers which ſhall come to their Markets within the ſaid City; which is not only againſt Law, but a very high breach of their truſt which his Majeſty hath repoſed in them, and a miſuſer and abuſer of their Franchiſes.

The Lord of a Mannor preſcribes to have of every man which breaks the Pound of the Lord there 3 *l.* the Preſcription is not good, becauſe Strangers cannot be bound by it, 21 *H.* 7. 40. 11 *H.* 7. *fo.* 14. *a.* 21 *H.* 7. *fo.* 20.

And any Town may make a By-law amongſt themſelves, that no man there ſhall put their Cattel within the Commons before *Michaelmas* upon pain of 20 *s.* adjudg'd that that binds them, but no Strangers ſhall be bound by it, 20 *H.* 7. 40. 11 *H.* 7. *fo.* 14. 21 *H.* 7. *fo.* 29.

And therefore that Ordinance or By-law made by the Guardians and the Fellowſhip of Weavers of *Newbury*, That no perſon ſhould uſe the Art of Weaving within the ſaid Town of *Newbury* except he had been an Apprentice to the Art within the ſaid Town, and had uſed it there by the ſpace of five years before the ſaid Ordinance, or were admitted by the Guardian and Fellowſhip, upon the pain of 20 *s.* a month, is void, becauſe it excludes Strangers, though they have ſerved as an Apprentice for 7 years to the ſaid Art: and becauſe it did reſtrain the Liberty of the Subject: *Hob. rep. fo.* 211, 212.

This Ordinance made by the Mayor and Commonalty and Citizens of *London* in their Common-council aſſembled, is againſt Law; it reſtrains the Kings Subjects in their Liberties (which are their rightful Inheritance). Every one that comes to their Markets with Victuals, *&c.* (without which they could not ſubſiſt) muſt pay, *&c.* if not, they muſt be turned out, *&c. Solve, aut abi:* this is *pro privato lucro.* But that Ordinance for carrying their Broad Cloth before ſale thereof to *Blackwel-hall* to be ſearched, was *pro bono publico*; and for that reaſon did oblige Strangers that did not bring their Cloth to be ſearched, *lib.* 5. Chamberlain of *Londons* Caſe.

Money cannot be raiſed or charged upon the Subject but by Act of Parliament. If the King himſelf cannot do it, I am ſure no Corporation can, having no power, Authority or Juriſdiction, but what is originally derived from him. It's not the quantity of Money levied by them, but the manner of the raiſing of it by a Legiſlative Power unjuſtly uſurped in their Common-council. It was not the quantity of the Ship-money, but the raiſing of it without a Parliament, which was the Crime. *Quos una culpa nectet, eos una pœna plectet*; and that muſt be the Seiſing of their Liberties.

A Man takes two pence for every Barrel of Beer which ſhall be Landed at a certain place near to the Sea; this is not lawful, although it be upon his own Land,

for

for this is to Levy a new Cuſtom, which he could not do. *Rolls Abridg. tit. Prærogat. fol.* 571.

An Information was againſt *Morgan*, for raiſing of two pence for every parcel of Beer landed at *Crockernepit* in the County of *Sommerſet*, near *Briſtol*; he was found guilty, was Fined one hundred Marks, and impriſoned by Judgment of Court upon one of the Articles in Eire, That it ſhall not be lawful for any perſon to raiſe a Tax, Rate, or Cuſtom upon the Subjects of the King, though on their own Land, *P.* 11. *Car.* 1. *Rolls Abridg. Tit. Prærogat. fol.* 571.

2. The Contriving, Imprinting, and Publiſhing of the Petition to be preſented to his Majeſty, containing much ſcandalous Matter in it, and Reflections upon his Government.

I agree, it's lawful for any Subject to Petition to the King for redreſs in an humble manner, when he finds himſelf grieved; for acceſs to the Sovereign muſt not be ſhut up in caſe of the Subjects diſtreſſes: but on the other ſide, it's not permitted under colour of a Petition and Refuge to the King, to make ill Reflections on his Majeſty and his Government.

If a Scandalous Letter be ſent and delivered to a perſon who received it, though the party which ſent it did never publiſh it, yet it's puniſhable, for the King and Common-wealth are intereſſed in it: for ſuch Letters do tend to the breach of the Peace, and to the ſtirring up Challenges and Quarrels; and therefore the Means of ſuch Evils, as well as the End, are to be prevented. *Hob. Rep. fol.* 62. *Barrow's* Caſe.

If a Man Imports Books writ beyond Seas againſt the Kings Supremacy, knowing the effect of them, and offer them to any Subjects, he is within the danger of the Statute 5 *Eliz.* So of thoſe that teach the Contents, and affirm it to be good; the ſame of him that conveys the Books ſecretly to his Friends, to perſwade them to be of that opinion; the ſame of them that Print, and offer ſuch Books within the Nation. *Dy. fo.* 282.

T. 6. *Car.* 1. An Information was Exhibited againſt *Bonham Norton*, his Son *John Norton*, *Lee May*, *Tho. Smith*, *&c.* for contriving a Slanderous Petition to the King, and for charging of the Lord Keeper with a Bribe for making of a Decree, and they were Sentenced.

T. 6. *Car.* 1. Doctor *Leighton* was Sentenced for Making, Imprinting, and Publiſhing of a deteſtable Book, containing in it Treaſonable Matter againſt the King, and inviting the Subjects to Rebellion.

Perkins was Sentenced to pay One thouſand pounds, and Impriſonment during his life, becauſe he diſperſed a Seditious Letter againſt the Loane of King *Charles* the Firſt; for the King ſent to the Free-holders to lend to him Money. *Huttons rep. fo.*

Veritas convitii non excuſat convitiantem a pœna.

Penry for publiſhing Scandalous Libels againſt the Church-Government, was Indicted, Arraigned, Attainted, and Executed, *P.* 35 *Eliz. inter Placita Coronæ in Banco Regis.* New Book of Entries, *fo.* 252.

Williams a Papiſt, and Barriſter at Law, Indicted of High-Treaſon, for writing two Books, the one called *Balaams Aſs*, and the other called *Speculum Regale*; becauſe he affirmed the King ſhould dye before 1621. and for ſaying that *England* was the Habitation of Devils; and that it is the abomination of deſolation: By all the Judges, it was High-Treaſon at Common-Law; for theſe words import the End and the Deſtruction of the King and his Nations; and

that

that false Religion is there maintained; which is a motive to the people to Rebellion. And although the Book was enclosed in a Box, sealed up, and conveyed secretly to the King, and never published, yet he was Attainted for High-Treason, and Executed at *Charing Cross*, *P.* 17. *Williams* of *Essex* Case. *Rolls rep. part.* 2. *f.* 89.

In the time of *Henry* the Eighth, upon the Dissolution of the Monasteries, there was a great Rebellion in the North of *England*; the Dean of *Windsor* being told of it, said, The King had brought his Hogs to a fair Market; and a Parson hearing of it said, *Principibus obsta sero medicina paratur*: because the words of the Dean had an ill Reflection upon the Government, and of his Majesties Management of the Affairs of State, they were both Indicted of High-Treason for speaking the words, and were found guilty; and the Dean was attainted of High-Treason; but the Parson, because he was so ignorant (as many times Ignorance is the best Sanctuary) that he did not know the difference between *Principiis* and *Principibus*, he was Reprieved, and obtained his pardon of the King.

Every Libel against a private person deserves severe punishment, for it incites all of the Family, Kindred, and Society to revenge, and tends to Quarrels: *Verba movent litem, lis vulnera, vulnera Mortem*; against a Subordinate Magistrate, it's a greater offence, because it scandalizes the Government; for *Injuria crescit & decrescit secundum dignitatem personæ*. But against the King, who is the Supream Head of the Common-wealth, *Pater Patriæ*, it's a Crime of the first Magnitude.

And how fatal and pernicious the publishing of Scandals and Libels have been to the Kings of *England*, and to their good Subjects, this Nation is very sensible: 7. *E.* 1. the King sent Commissions to all the Counties of *England*, to enquire *de Spersoribus Rumorum*: and 25 *E.* 1. *Declaratio Regis missa fuit ad omnes Comitatus Angliæ, de Rege purgando de certis rumoribus iniquis contra ipsum ortis*, &c. *Rot. Parl.* 7. *E.* 1. *M.* 13. *Rot. Patent.* 25 *E.* 1. *pars* 2. *M.* 7.

A Declaration of the King was sent to all the Counties of *England*, to purge him of certain false and unjust Rumours and Scandals raised against him.

Rex mandavit Majori & Vicecomit. London, *Quod facta inquisitione de sparsoribus rumorum & Seditionem in Civitate, ipsas caperent, & in Prisona de* Newgate *detinerent*: 20 *E.* 3. *pars* 1. *M.* 18. & 26.

The King Commands the Major and Sheriffs of *London*, that they make diligent inquisition of the spreaders of False Reports and Sedition in the City, and that they should seize upon them, and keep them in the prison of *Newgate*.

As for the Petition imprinted and published by the Major, Aldermen, and Citizens, I hope it was acted by many of them out of a principle of Piety and Loyalty, but must needs be looked upon as an action of no great discretion in them, (to say no worse) for to make such ill reflections upon his Majesty, when the King by his Oath is bound to do Justice, and *Nulli Negavimus*, is one of his Royal Attributes.

Ob. But it hath been said, That no acts bind beyond the Corporation, but such as are done under their common Seal; therefore they cannot present a Clerk to a Living, but by Deed *sub Communi Sigillo*, 13 *H.* 8. 12. nor make a Surrender, 33 *H.* 6. 17. 34 *H.* 6. 21. nor assign Auditors, 4 *H.* 7. 17. 7 *H.* 7. 9. *Et hujusmodi*, so their Laws and Constitutions made in their Common Council do not bind, because they are not under their Common Seal.

Anſw. Excellent Logick; he muſt be a rare Chymiſt that can Extract ſuch a Conſequence from the Premiſſes. The Common Council of the City is a Parliament of the City; the Mayor is the King, the Aldermen the Peers, the Commonalty the Commons; and what they there Enact and Ordain is upon Record; *Jones Rep. Fol.* 540. Therefore thoſe Conſtitutions and Ordinances by them there made, being Enacted in a Court of Record, if not Warrantable, make the more againſt them; and what is then by them Enacted is of greater Force and Puiſſance than if it had been under their Common Seal. If they appoint an Attorney at Law or Bayliff in their Common Council, they may juſtifie any Act which doth belong to their Office, *Sans monſtrans de fait*, &c. for it's to the Uſe of the Corporation, 19 *H.*7. 25, 26. They certifie their New Mayor Yearly in the Exchequer, becauſe it's entred on Record, 13 *H.*8. 22. *vide lib.* 10. *& Guardians* 8. S. *Saviours Caſe.* 14 *H.*8. 29. 12 *E.*4. 9, 10.

IV. *If the Mayor, Commonalty, and Citizens have done any Act in their Common Council, whereby to Forfeit their Corporation and Franchiſes.*

Where a Franchiſe is abſolute and entire, and hath no dependence on another Franchiſe, then if any incident to it be Forfeited, the whole Franchiſe is Forfeited, 22 *Aſſ.* 34. *Palmers Rep. Fol.* 82. *en l' Caſe de Corporation de Maydenhead.*

But the Corporation of *London* is a Franchiſe, *Court of Entries, Fol.* 527. *Palmers Rep. Fol.* 82. abſolute and entire, and hath no dependance on another Franchiſe, therefore the Forfeiture of any incident to the Corporation of *London*, is a Forfeiture of the Corporation.

To make Laws and Ordinances for the well Government of the Corporation is incident to every Corporation, *Hob. Rep. Fol.* 211. But the Corporation of *London* hath abuſed and miſ-uſed this Power, therefore they have Forfeited their Power to make Laws and Ordinances, which is incident to their Corporation, therefore they have Forfeited their Corporation; the abuſe of the Court of *Pye-Powders*, being incident to a Fair, is a Forfeiture of the Fair, 7 *H.* 4. 44. otherwiſe of Toll, becauſe it's not incident to the Fair or Market, *Palmer, Ibid.*

Object. There is a Stat. 7 *R.* 2. That the Citizens of *London* ſhall enjoy all their whole Liberties whatſoever, with this clauſe, *Licet ea non fuerint, vel abuſi fuerint*, and notwithſtanding any Statute to the contrary, 7 *R.* 2. *n.* 37.

Anſw. This is no Act of Parliament, but an Act of Grace of the King in Parliament.

For no aſſent of the Lords, *&c.* do appear, but only *per advisamentum Regem & Conſilium ſuum*, which muſt be intended his Privy Council, if it had been otherwiſe, then *Conſilio Comitum Baronum*, &c. as 35 *E.* 3. *apud Carliolen Stat. de Aſportatis Religioſorum*, &c.

But admitting it to be an Act of Parliament, it doth only extend to ſuch Offences and Crimes which they had committed or omitted, and not to thoſe that ſhall be committed or omitted by them *de futuro*: If other-

wiſe, it would have been againſt all Reaſon and Juſtice, and by conſequence void; and that it muſt be ſo, read the Kings Anſwer to the Petition of the Commons at large, *Jones Rep. Fol.* 241.

And if we look into all the Statutes which confirm the Liberties of *London, viz.* 14 *E.* 3. *c.* 1. which confirms all Reaſonable Liberties. 2 *H.* 4. *c.* 1. the Liberties which have been duly uſed. 3 *H.* 5. *c.* 1. all, except ſuch as are Repealed by the Common Law. 2 *H.* 6. *c.* 1. All Liberties well uſed, and not Repealed by the Common Law. There is no Statute or Preſcription Warrant any of their Actions but only ſuch as are conſonant to Right, Reaſon, and Juſtice.

Qui Muragium ad villam clandendam graviùs coperint quam conceſſum fuerit per Chartam Regis, perdent ex tunc gratiam ſuæ conceſſionis & gravitèr amerciantur. Fleta, lib. 2. c. 43.

They which ſhall take more Murage than is granted to them, ſhall loſe the Benefit of their Grant, and ſhall be grievouſly Amerced.

Le lex voet que cheſcun perdera ſon Franchiſe que eo miſuera, Mirror, c. 5. §. 4.

The Law wills, that every one ſhall loſe his Franchiſe which miſ-uſe it.

And *Bracton* ſaith, that *Libertates poſſunt amitti per abuſum vel non uſum*, Bract. lib. 2. Fol. 56. lib. 3. Fol. 117.

And it's to be Obſerved, that where the Law ſaith, that they ſhall loſe their Liberties or their Grant, it's to be underſtood of a Forfeiture of them for ever, *Inſt. Part* 2. *Fol.* 222.

How the Mayor and Commonalty and Citizens of *London* have miſuſed and abuſed their Franchiſe by Levying of ſuch Sums of Money, to the Oppreſſion of His Majeſties good Subjects, is ſubmitted to the grave conſideration of all Sober and diſ-intereſſed Perſons.

A Leet was ſeized into the Kings Hands becauſe they did take of the Offenders againſt the Aſſize of Bread and Beer 2 *s.* when they had no Pillory nor Tumbrel, *Raſtals Entries, Fol.* 540.

In the Eires of the County of *Cornwall*, 30 *E.* 1. *inter Placita Coronæ & infra Hundredum de Kerjer*, there was preſcribed that in *Holſton Burgh* they did take, *de novo*, of every great Beaſt, *viz.* Ox, *&c.* as well of the Buyers as of the Sellers, one penny, whereas they ought to take but one penny of the Buyer: And that they take of Merchandiſes exceeding 12 *d.* of the Buyer, *ob.* and of the Seller, *ob.* whereas they ought to take but *ob.* of the Buyer. *Rolls Abridg. Part* 2. *Fol.* 523.

The Juſtices in Eire did enquire of thoſe which did take ſuperfluous or undue Tolls in Cities, Burroughs, or elſewhere againſt the common Uſage of the Kingdom, *Cap. Itineris vet. Magna Charta.*

It's to be Obſerved, that if the Defendants in a *Quo Warranto* made default, their Franchiſes were ſeized into the Hands of the King, and the King was to be Anſwered all the Profits, and if they did not Replieve within the Eire, they loſt their Franchiſes for ever. *Iten. Canc.* 6 *E.* 2. 7.

ob. If

Ob. If the Mayor and Commonalty and Citizens of *London* have committed any Offence, the particular Perſons which have tranſgreſſed ought to be puniſhed, but the Corporation cannot, for no Treſpaſs lyes againſt a Corporation, 22 *Aſſ.* 67. *Brok. Tit. Corp. n.* 43. 15 *E.* 4. 1. *b* No *Capias*, no exigent againſt it, neither can it be Impriſoned, 21 *E.* 4. 69, 70. 45 *E.* 3. 2, 3. Neither can a Corporation be bound in a Statute or Recognizance, *Moores Rep.* 68.

Anſw. His Majeſty may proceed againſt them in their Politick capacity, and ſo to a Forfeiture of their Corporation and Franchiſes; or in their Natural capacities againſt any particular Perſons of the Corporation which are Offenders, and they ſhall be puniſhed *Secundum quantitatem & qualitatem delicti*; according to the quantity and quality of their Offence.

Non oppreſſus liberant, Qui liberos opprimunt.

They will not free thoſe which are Oppreſſed, who Oppreſs thoſe which are Free.

FINIS.